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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TRACY McINTOSH,

Plaintiff and Appellant,

v.

BRAD HELMAN et al.,

Defendants and Respondents.

G041277

(Super. Ct. No. 07CC09923)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James P. Gray, Judge. Affirmed.

Tracy McIntosh, in pro. per., for Plaintiff and Appellant.

Law Office of Priscilla Slocum and Priscilla Slocum; Vail, MacRae & Edrington and Bruce C. Davis for Defendants and Respondents Brad Helman and Janine Helman.

Selman Breitman, Monica Cruz Thornton and Jennifer A. Clingo, for Defendant and Respondent Bobby Gilbert.

Appellant Tracy McIntosh has represented herself throughout this case. She appeals from a judgment rendered in defendants' favor following a jury trial on her claim for negligence. However, she did not order the reporter's transcript of the proceedings below, her appellate briefs are largely incoherent, and she has failed to provide grounds for relief. We therefore affirm the judgment.

BACKGROUND

On September 17, 2007, McIntosh filed suit against her neighbors Brad and Janine Helman. The complaint alleged the Helmans allowed their landscaping to encroach on McIntosh's property and "engaged in surreptitious trespass" by cutting the limbs off several of McIntosh's trees. Bobby Gilbert was also named as a defendant in the suit, both individually and under the dba of B&J Tree Service. McIntosh's initial complaint alleged a variety of causes of action, but several demurrers and amended complaints later, the case proceeded to trial on a single claim for negligence. The jury found in defendants' favor, and McIntosh appealed from the subsequent judgment.

McIntosh's opening brief consists of a perplexing assortment of individually titled paragraphs, the first of which sets forth the question presented on appeal as follows: "Whether litigant's rights to a fair trial can be abrogated by conspirator's perversion or obstruction of justice or the due administration of laws?" From there, McIntosh intermixes various factual allegations with rote legal quotations, saying precious little about negligence, the sole issue at her trial. Instead, she devotes much of her brief to constitutional provisions, civil rights statutes and Penal Code provisions that have nothing to do with her case.

As for the proceedings below, she alleges the court locked her out of the courtroom on one occasion and also purposely manipulated her assistive listening device, thereby turning it into a "tool of torment." She also accuses the defense of failing to produce the *real* Bobby Gilbert at trial. However, none of these allegations are

accompanied by citations to the record. And, as noted above, there is no reporter's transcript to aid us in our review of them.

DISCUSSION

“It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and “all intendments and presumptions are indulged in favor of its correctness.” [Citation.]” [Citation.]” (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.) Accordingly, it is the appellant's burden to show the trial court prejudicially erred. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.)

To carry this burden, the appellant must provide meaningful argument with appropriate citations to the record below. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp.* (2003) 111 Cal.App.4th 1328, 1346, fn. 16; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) She must also include all relevant portions of the trial court record in the record on appeal. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) “Matters not presented by the record cannot be considered on the suggestion of [the parties] in [their] briefs.”” (*In re Hochberg* (1970) 2 Cal.3d 870, 875.)

These rules apply to attorneys and nonattorneys alike: “When a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys.”” (*Bianco v. California Highway Patrol, supra*, 24 Cal.App.4th at pp. 1125-1126.)

That's unfortunate for McIntosh because she has neglected to present her arguments in a cohesive fashion or affirmatively demonstrate why the judgment should be reversed. She does make a variety of allegations against the court and her opposition, but those allegations are unsupported by references to the record, making them impossible to verify. One item in the record that McIntosh does cite to, and which she mentions repeatedly, is defendant Gilbert's seventh affirmative defense of equitable

estoppel. However, she fails to explain how that defense favors her or why it would warrant granting her relief on appeal. The fact is, McIntosh has not provided any legal basis for disturbing the judgment, and therefore we must affirm.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.